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How clients can ensure their 'fur babies' are cared for long after they're gone

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When it comes to estate planning, how much control do your clients want over the fates of their beloved pets?

Experts say the answer to that question can determine how the documents will be drafted, how much money should be set aside and who will ultimately be responsible for them once the client passes on.

On one end of the spectrum, Evan H. Farr, principal attorney at Farr Law Firm in Fairfax, Virginia — who offers estate planning and elder law services for families — said many of his clients include language in their estate plans that provide that pets go back to breeders or previous owners.

From there, plans can range from being as simple as naming a pet guardian, to a client holding their home in trust to ensure a high level of care for pets until they, too, pass on.

But, if clients want greater assurances that their pets will be cared for in the manner of their choosing, estate planning experts say a formalized pet trust is often the best way to go about it.

"If it's not legally documented, there's no guarantee those wishes will be honored," said Nicole Israel, an estate planning attorney in New York City. "A properly structured plan ensures continuity of care and peace of mind for the client."

Establishing formal pet trusts

For clients with animals that live longer, such as horses or exotic birds, like parrots, Farr said he often establishes formal pet trusts, legal instruments allowed by most states to operate for years and sometimes decades, he said.

"This provides the client with more than simply identifying a caregiver," he said. "It establishes a method for providing financial support for the pet's ongoing needs, monitoring compliance with the caregiver's responsibilities and ensuring the pet receives the care it was originally intended to receive through enforcement if necessary."

Without such a trust, legally a pet is no different than a guitar in an estate document, said Jay Zigmont, CEO and founder of Childfree Wealth in Mount Juliet, Tennessee.

"You can name someone to be your pet's guardian, but if you don't have a pet trust there is nothing stopping them from taking any money you gave them and kicking out your pet," he said.

The pet is the beneficiary of the trust, but there must be a human trustee and a human trust protector to make these pet trusts valid, said Farr.

"Establishing a valid pet trust transforms the client's intent into enforceable obligations," he said.

The details of a pet trust
A valid pet trust must consider:

- Identification of the pet or pets.
- Designating both primary and backup caregivers.
- Clearly defining how the trust is funded, for example, through a lump-sum payment or through a formula that calculates funding based on the anticipated length of life and cost of care.
- Outlining the specifics of the pet's care, including dietary requirements, medical treatments, living accommodations and decision-making authority related to end-of-life options.
- Appointing a trustee other than the caregiver that would provide an element of responsibility and accountability.
- Having a "trust protector or enforcer," a person appointed in a pet trust to enforce the trust on behalf of the animal.

"Without some form of trustee oversight, like the trust protector, there is no assurance that the funds will be utilized consistent with the client's original intent nor that the pet will receive the quality of care as provided for within the trust," said Farr.

When a trust is established, the trustee has a fiduciary duty to care for the pet or pets according to the deceased's wishes, tax returns must be filed and a trust protector can request an audit on behalf of the pet, said Jillian Hishaw, owner and attorney at Hishaw Law in Charlotte, North Carolina.

"Detailed care instructions, appointment of trustee and caregiver are essential components to a pet trust," she said.

When it comes to creating pet trusts, the most typical error Farr said he sees is underfunding or failing to budget for unforeseen events or contingencies.

"Pets can live longer than projected, caregivers can fall ill, die or withdraw from their role prior to the expiration of the trust term, and unexpected or unforeseen expenses can arise relative to the pet's health and veterinary needs," he said.

Planning for the costs
Whatever path clients choose for the care of their pets, the associated costs have

to be taken into consideration.

Nev Kraguljevic, principal and financial planner at Elephant Corner Financial in Shelburne, Vermont, said he regularly includes pets in clients' estate planning. He said he has also done this for himself, as he has a cat named Charlie who he describes as his "fur-kid, buddy and assistant."

Nev Kraguljevic, principal and financial planner at Elephant Corner Financial in Shelburne, Vermont, with his cat, Charlie.
Courtesy photo

Kraguljevic said clients with pets consider them members of the family, so he

makes sure the budgets for taking care of them are included in wills.

"We talk about who would take care of them and work through any costs associated with it," he said.

For dogs and cats, the typical provision is simply giving each pet to a specific person along with a sum of money —often between $5,000 and $10,000 — to help offset the care and feeding of that pet, said Farr.

It isn't always about leaving large amounts of money to care for the pet, said Zigmont. In most cases, his clients aren't leaving their entire estate to their pet, he said. Instead, they are leaving $25,000 to $50,000 per pet to care for them.

"In our childfree trust documents, the pet trust is funded before any beneficiary is paid," he said. "Effectively that means their dog gets protection before their nephew or charity gets anything. In this way, it ensures the priority is on caring for the pet."